HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.17915 OF 2006

Between:

Shaik Shakeel Mahmood

…Petitioner

AND

State of Andhra Pradesh,

Rep., by its secretary, Ministry of Municipal

Administration, Secretariat Buildings,

Hyderabad and two others

...Respondents

: O R D E R :

Counsel for the petitioners : Shri Kishore Rai

8th December, 2006

Per G.S.SINGHVI, C.J.

This petition filed under Article 226 of the Constitution of India for quashing notice dated 25-8-2006 issued by Commissioner, Municipal Corporation of Hyderabad (hereinafter described as 'the Commissioner') under Section 636 of Hyderabad Municipal Corporation Act, 1955 (for short, the Act') is illustrative of mushroom growth of litigation in which the persons accused of raising illegal constructions in violation of the municipal and town planning laws seek intervention of the superior courts after they fail to persuade the civil court to grant injunction. The enormity of this type of litigation which consumes substantial time of the courts calls for a serious examination of the issue relating to entertainability of such petitions.

The petitioner is said to have purchased premises bearing H.No.22-8-389/1/2 measuring 423 square yards situated at Purani Haveli, Hyderabad by registered sale deed dated
17-08-2004. Soon after purchasing the property, the petitioner raised certain constructions albeit without obtaining permission from the competent authority of

Municipal Corporation of Hyderabad (for short, 'the Corporation'). This prompted the Commissioner to issue notice dated 04-08-2005 under Section 452 of the Act, whereby the petitioner was called upon to show cause as to why he should not remove the construction, which was termed as unauthorised. The petitioner could have filed reply to the show cause notice and made an attempt to convince the Commissioner that the construction made by him is not against the provisions of the Act and the building rules. But instead of adopting that course, he filed suit for injunction in the Court of VI Junior Civil Judge, City Civil Court, Hyderabad which was registered as O.S No.5226 of 2005. He also filed an application for temporary injunction, which was registered as I.A No.574 of 2005. By an order dated 07-03-2006, VI Junior Civil Judge disposed of the injunction application by directing the petitioner to submit reply to the show cause notice with liberty to the Municipal Corporation to take action in accordance with law in the event of non-filing of the reply.

Armed with the order of the Court, the petitioner filed reply dated 08-08-2005. After considering the same, the Commissioner issued the impugned notice requiring the petitioner to remove the illegal and unauthorised construction of WC/bath at the premises in question.

The petitioner could have amended the pending suit and made a prayer for quashing notice dated 25-08-2006 issued under Section 636 of the Act. He could have also filed another application for temporary injunction. Instead of doing that, he filed this petition for quashing the notice and issue of a direction to the Municipal Corporation to consider his case under Hyderabad Revised Building Rules, 2006 (for short, 'the 2006 Rules').

In the affidavit filed by him, the petitioner has averred that the construction raised by him is not violative of the provisions of the Act and in any case, such construction can be regularised under Section 21 (iii) of 2006 Rules.

In the counter affidavit filed by Shri Mohd. Farooq, Assistant City Town Planner of the Corporation, it has been averred that the construction made by the petitioner is violative of the provisions of the Act and as the petitioner had not sought permission from the competent authority for raising the construction, notices were issued under Sections 452 and 636 of the Act.

After arguing the case for sometime, learned counsel for the petitioner made a request that his client may be permitted to withdraw the writ petition with liberty to pursue the civil suit.

At one stage, we thought of dismissing the writ petition with costs, but, keeping in view the fact that the alleged unauthorised construction raised by the petitioner is very minor, we consider it appropriate to accept the request of the learned counsel and dismiss the writ petition as withdrawn. Ordered accordingly.

As a sequel to dismissal of the writ petition as withdrawn, WPMP No.22475 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, C.J.

December 8, 2006

C.V. NAGARJUNA REDDYJ.

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